

## THE IOWA DISTRICT COURT - DUBUQUE COUNTY

### DIRECTIONS FOR SERVICE OF ORIGINAL NOTICE

**TO:** Sheriff, Polk County  
2309 Euclid  
Des Moines, IA 50310

**SERVE:** C T Corporation System  
Registered Agent for Flint Hills Resources, LP

**AT:** 500 East Court Avenue  
Des Moines, IA 50309

**ON COMPLETION OF SERVICE NOTIFY:** Thomas L. Staack  
3151 Brockway Road  
P.O. Box 810  
Waterloo, IA 50704

RECEIVED  
2011 MAR 21 PM 3:00  
POLK COUNTY  
SHERIFF'S OFFICE

### NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR:

**DATE:** 3/29/2011

DUTTON, BRAUN, STAACK  
& HELLMAN, P.L.C.

**BY:**

*Thomas L. Staack by [Signature]*

Thomas L. Staack AT0007438  
3151 Brockway Road  
P.O. Box 810  
Waterloo, IA 50704  
(319) 234-4471

### DEPOSIT FOR COST OF SERVICE

☐ Deposit Waived

☒ Deposit for \$20.10 required and receipt thereof  
acknowledged.

\_\_\_\_\_  
Clerk of Court

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

NICK J. GAU and  
PENNY J. GAU,

Plaintiffs,

vs.

FLINT HILLS RESOURCES, LP and  
KOCH INDUSTRIES, INC.,

Defendants.

Law No. 01311 LACV057019

ORIGINAL NOTICE

POLK COUNTY, IA  
CLERK OF COURT

2011 MAR 31 P 3:58

RECEIVED

TO THE ABOVE-NAMED DEFENDANT(S): FLINT HILLS RESOURCES, LP

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendant(s) in this action. A copy of the petition is attached to this notice. The attorneys for the plaintiffs are Thomas L. Staack and Farl J. Greene and their address is 3151 Brockway Road, P.O. Box 810, Waterloo, Iowa 50704. The attorneys telephone and facsimile numbers are: Telephone (319) 234-4471; FAX (319) 234-8029.

You must serve a motion or answer within 20 days after service of this original notice upon you. Within a reasonable time thereafter you must file your motion or answer with the Clerk of Court for Dubuque County, at the county courthouse in Dubuque, Iowa. If you do not, judgment by default may be rendered against you for the relief demanded in the petition.

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at 563-589-4433. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

*Cory H. Davis*

*AT*

CLERK OF THE ABOVE COURT  
Dubuque County Courthouse  
Dubuque, Iowa 52001

IMPORTANT: YOU ARE ADVISED TO SEEK LEGAL ADVICE AT ONCE TO  
PROTECT YOUR INTERESTS

IN THE IOWA DISTRICT COURT IN AND FOR DUBUQUE COUNTY

NICK J. GAU (DOB 7/19/56) and  
PENNY J. GAU (DOB 3/19/60),

Plaintiffs,

vs.

FLINT HILLS RESOURCES, LP and  
KOCH INDUSTRIES, INC.,

Defendants.

Law No. 01311 LACV057019

PETITION AT LAW

FILED  
2011 MAR 17 AM 11:31  
CLERK OF DISTRICT COURT  
DUBUQUE COUNTY, IOWA

COME NOW the Plaintiffs, by and through their attorneys, Dutton, Braun, Staack & Hellman, P.L.C., and for their Petition at Law against the above-named Defendants, state as follows:

**GENERAL ALLEGATIONS**

1. The Plaintiffs, Nick J. Gau and Penny J. Gau, are residents of Dubuque, Dubuque County, Iowa.
2. Defendant Flint Hills Resources, LP (hereinafter "Flint Hills") is a Delaware corporation with its principal place of business in Wichita, Kansas, and is a subsidiary of Defendant Koch Industries, Inc. (hereinafter "Koch Industries") which is a Kansas corporation with its principal place of business in Wichita, Kansas.
3. Flint Hills is a refining and chemicals company that manufactures, produces, supplies, markets, sells, and distributes a wide range of chemicals, including trimellitic anhydride, to customers in the United States and throughout the world, including customers in the State of Iowa.
4. At all times material to this Petition at Law, Flint Hills has conducted business

in the State of Iowa through the manufacture, production, supply, marketing, sale, and/or distribution of its chemical products, including the trimellitic anhydride at issue in this case, and its ownership and operation of an ethanol plant in Shell Rock, Iowa.

5. Koch Industries engages in petroleum refining, chemicals and base oil production, crude oil supply, and wholesale marketing of fuels, base oils, petrochemicals, asphalt and other products, including trimellitic anhydride, to customers in the United States and throughout the world, including customers in the State of Iowa.

6. At all times material to this Petition at Law, Koch Industries has conducted business in the State of Iowa through the manufacture, production, supply, marketing, sale, and/or distribution of its chemical products, including the trimellitic anhydride at issue in this case.

7. On August 27, 2009, Plaintiff Nick J. Gau was employed by YRC Worldwide Trucking as a driver/dock worker.

8. On August 27, 2009, Plaintiff Nick J. Gau was instructed to unload and/or clean out a trailer.

9. The trailer contained brown sacks of trimellitic anhydride stacked on a pallet.

10. When he entered the trailer, Plaintiff Nick J. Gau noticed that one or more of the sacks was ripped.

11. Upon seeing the ripped sack(s), Plaintiff Nick J. Gau obtained some tape and sealed the sacks with the tape.

12. The sacks of trimellitic anhydride did not have any warning signs on them.

13. At that time and place, Plaintiff Nick J. Gau was unaware that the sacks contained anything that was toxic or a potential respiratory hazard.

14. After he sealed the sacks, Plaintiff Nick J. Gau proceeded to sweep up approximately 160 pounds of trimellitic anhydride that had spilled on the floor of the trailer.

15. Approximately ten to fifteen minutes after he began sweeping, Plaintiff Nick J. Gau noticed his eyes were burning and watering, his lungs were burning, he was coughing, and that he had a rash on his arms and hands.

16. As a result of his exposure to the trimellitic anhydride, Plaintiff Nick J. Gau sustained personal injuries and other damages.

**COUNT I:**  
**Negligence Against**  
**Defendant Flint Hills Resources, LP**  
**and Defendant Koch Industries, Inc.**

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. The negligence of Defendants, Flint Hills and Koch Industries, includes, but is not limited to, their failure to properly, appropriately, and/or adequately label, package, wrap, crate, supply, and/or ship the trimellitic anhydride at issue in this case

19. Defendants', Flint Hills and Koch Industries, negligence was a cause of the injuries and damages sustained by Plaintiff Nick J. Gau.

20. The injuries sustained by Plaintiff Nick J. Gau were within the scope of Defendants', Flint Hills and Koch Industries, liability.

21. As a result of Defendants', Flint Hills and Koch Industries, negligence, Plaintiff Nick J. Gau has suffered and will continue to suffer damages, including but not limited to: past and future medical expenses, past lost wages, future loss of earning capacity, past physical and mental pain and suffering; future physical and mental pain and suffering; past loss of full mind and body, and future loss of full mind and body.

WHEREFORE, Plaintiff Nick J. Gau prays that judgment be entered against Defendants, Flint Hills and Koch Industries, in an amount appropriate to compensate him for all of the injuries, losses, and damages sustained, including interest and costs, and for such other relief as the Court deems just and equitable under the circumstances.

**COUNT II:**  
**Inadequate Instructions or Warnings Against**  
**Defendant Flint Hills Resources, LP**  
**and Defendant Koch Industries, Inc.**

22. Paragraphs 1 through 21 are incorporated herein by reference.
23. Flint Hills and/or Koch Industries sold or distributed the trimellitic anhydride at issue in this case.
24. Flint Hills and/or Koch Industries were engaged in the business of selling or distributing trimellitic anhydride.
25. The foreseeable risks of harm posed by the trimellitic anhydride could have been reduced or avoided by the provision of reasonable instructions or warnings.
26. The omission of the instructions or warnings renders the trimellitic anhydride not reasonably safe.
27. The risk to be addressed by the instructions or warnings was not obvious to, or generally known by, foreseeable product users.
28. The omission of the instructions or warnings was a cause of Plaintiff Nick J. Gau's injuries and damages.
29. The injuries sustained by Plaintiff Nick J. Gau were within the scope of Defendants', Flint Hills and Koch Industries, liability.
30. As a result of the omission of the instructions or warnings, Plaintiff Nick J.

Gau has suffered and will continue to suffer damages, including but not limited to: past and future medical expenses, past lost wages, future loss of earning capacity, past physical and mental pain and suffering; future physical and mental pain and suffering; past loss of full mind and body, and future loss of full mind and body.

WHEREFORE, Plaintiff Nick J. Gau prays that judgment be entered against Defendants, Flint Hills and Koch Industries, in an amount appropriate to compensate him for all of the injuries, losses, and damages sustained, including interest and costs, and for such other relief as the Court deems just and equitable under the circumstances.

**COUNT III:**  
**Loss of Spousal Consortium Against**  
**Defendant Flint Hills Resources, LP**  
**and Defendant Koch Industries, Inc.**

31. Paragraphs 1 through 30 are incorporated herein by reference.

32. Nick J. Gau and Penny J. Gau have been husband and wife at all times material to this Petition at Law.

33. Plaintiff Penny J. Gau has suffered past and future loss of spousal consortium as a result of the injuries and damages sustained by her spouse as described herein.

WHEREFORE, Plaintiff Penny J. Gau prays that judgment be entered against Defendants, Flint Hills and Koch Industries, in an amount appropriate to compensate her for all of the injuries, losses, and damages sustained, including interest and costs, and for such other relief as the Court deems just and equitable under the circumstances.

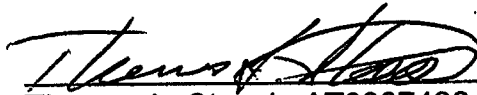
**CERTIFICATION OF JURISDICTIONAL AMOUNT**

Pursuant to Iowa Code Section 619.18, the Plaintiffs certify to the Court that this action meets applicable jurisdictional requirements for amount in controversy in District Court.

Respectfully Submitted,

DUTTON, BRAUN, STAACK & HELLMAN, P.L.C  
Attorneys for the Plaintiffs

BY:

  
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Original filed.

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